APPENDIX.

The pertinent provisions of the Labor Management Relations Act of 1947 (Act of June 23, 1947, 61 Stat. 136 et seq., 29 U. S. C. A. 141 et seq.), are as follows:

Sec. 9:

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . ." 29 U. S. C. A. 159 (a).

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a) or (ii), assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by a officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof . . . " 29 U. S. C. A. 159 (c) (1).

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript . . . " 29 U. S. C. A. 159 (d).

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secre-

tary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

> "(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and
>
> "(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor . . . " 29 U. S. C. A. 159 (f).

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has compiled with its obligation under this subsection . . . " 29 U. S. C. A. 159 (g).

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the

representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such a party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits . . . " 29 U. S. C. A. 159 (h).

Sec. 10:

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was pre-

vented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C) . . .'' 29 U. S. C. A. 160 (b).

''(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record

in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined, therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347) . . ." 29 U. S. C. A. 160 (e).

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 695

RED ROCK COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (T. 183-187) [1] is reported at 187 F. 2d 76. The findings of fact, conclusions of law, and order of the Board (T. 94-111) are reported at 84 NLRB 521.

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[1] We adopt herein the designations employed in the petition for certiorari for the three separately paginated volumes which comprise the printed record before this Court: for the Transcript of Record in the court below, "T."; for the Appendix to the Board's brief in the court below, "B.A."; for the Appendix to petitioner's (Red Rock's) brief in the court below, "A".

JURISDICTION

The judgment of the court below was entered on February 15, 1951 (T. 188). A petition for rehearing, filed on March 1, 1951 (T. 189), was denied on March 9, 1951 (T. 197). The petition for a writ of certiorari was filed on April 24, 1951. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. Supp. III, 141, *et seq.*), are set forth in the Appendix, *infra,* pp. 17-21.

QUESTIONS PRESENTED

1. Whether, in an unfair labor practice proceeding against an employer, the Board must plead and prove the facts showing that the labor organization which instituted the charges has filed with the Secretary of Labor and the Board the documents required by Section 9 (f), (g), and (h).

2. Whether the Board's finding that petitioner refused to bargain collectively with the Union is supported by substantial evidence on the record considered as a whole.

STATEMENT

A. *The facts as found by the Board*—Upon the usual proceedings under Section 10 of the National

Labor Relations Act, as amended, the Board, on June 27, 1949, issued its findings of fact, conclusions of law, and order.[2] The pertinent facts may be summarized as follows:

Petitioner, a Georgia corporation engaged in the bottling and distribution of a soft drink, employed fourteen driver salesmen during the period involved in these proceedings (T. 96, 117-118, 140; B. A. 5, 6, 14).[3] Early in February, 1948, an organizational campaign among these employees was undertaken by Local No. 859, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, A.F.L. (hereinafter called the Union) (T. 119; B. A. 10-11). On February 23, 1948, two of the driver salesmen, the first to sign applications for membership in the Union, were discharged for their union activities (T. 101-103, 130, 138; B. A. 20-21, 22, 28, 30-31, 11, 29).[4]

Four days earlier, on February 19, having received applications for membership and authoriza-

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[2] The Board's order was directed against the Red Rock Cola Company as well as petitioner. However, the court below denied enforcement against the Cola Company (T. 187), and no question as to that determination is being raised here. Accordingly, like petitioner (see Pet. 3), we make no further reference to the Cola Company.

[3] In this statement record references which precede a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[4] Petitioner does not here question the correctness of the Board's finding that the two discharges of February 23 were for union activities.

tions to act as representative from ten of the fourteen driver salesmen (T. 104, n. 24, 140-141; B. A. 11-15, 21-23, 25-26, 29, 31-33, 35, 42, 46, 47, 49, 59-62, 73-76), the Union advised petitioner by telegram that it represented a majority of the driver salesmen and requested a meeting "to discuss the possibilities of a contract" (T. 103, 141; B. A. 14-15, 62-63). By letter dated February 23, petitioner's attorney replied to the telegram and asked the Union to call and arrange a meeting (T. 103, 141; B. A. 15-17, 63).

On the same day, which was also the day of the two discharges referred to above, petitioner's vice president and general manager, Satterthwait, prepared a petition for the signatures of the driver salesmen, addressed to himself, reading as follows (T. 98, 120-121; B. A. 51, 52, 77):

> You have informed each of us that you have received a telegram from a Union Organizer in which the Organizer says he represents the salesmen of the Red Rock Co.
>
> This letter is to advise you that each of us desires to bargain for himself, and is not represented by a Union.
>
> The Company is therefore authorized and directed to deal directly with the undersigned.

Satterthwait then called the driver salesmen individually to his office and showed each one the telegram from the Union and the petition he had prepared (T. 100, 121; B. A. 51-52). Two of the driver

salesmen were specifically asked to sign the petition (T. 99, n. 11; B. A. 44, 46). One was asked if he had been to a union meeting (T. 123; B. A. 31-32); another was asked whether he was a member of the Union (T. 99, n. 14, 124; B. A. 48); another was told that "we didn't need no representative come in and talk to him and his door is open at all times" (T. 123; B. A. 34); another was told "just to leave the union bunch alone and we would be all right" (T. 99, n. 14, 125; B. A. 50). Within 24 hours all of the driver salesmen had signed the document prepared by Satterthwait (T. 121; B. A. 77).

On or about February 24, Satterthwait drafted the following telegram addressed to the Union (T. 98, 121-122; B. A. 53, 67-73):

> I hereby withdraw my application for membership in your Union as of this moment.

Several copies of this telegram were made and they, like Satterthwait's petition addressed to himself, were shown to the driver salesmen, individually (T. 99, 123-125; B. A. 32-33, 34, 36-37, 45-46, 47, 49-50). Verbatim copies of this telegram were apparently signed and sent by all of the driver salesmen who had been shown them (T. 121; B. A. 67-73), including one who had not joined the Union (T. 126-128, 129; B. A. 38).

On about February 26 or 27, a meeting was held between petitioner's attorney and the Union's business agent (T. 103; B. A. 16). At this meeting, in

refusing the business agent's request for a consent election to resolve any question concerning the Union's majority status, petitioner's attorney stated "that the company didn't want any union, and they were going to * * * use all methods to prevent a union in the Red Rock Cola Company" (T. 103-104; B. A. 16).

On March 1, having received the telegrams drafted by Satterthwait announcing the withdrawal of a number of the driver salesmen (Tr. 141; B. A. 17-18, 67-73), the Union wrote to petitioner renewing its request for recognition. Referring to the two discharges for union activities and to petitioner's successful efforts to procure its employees' signatures to anti-union documents, the Union urged "that the only fair way of determining this matter would be conducting an election by secret ballot in order that your employees would be able to express their real desire" (T. 104, 141; B. A. 16, 64-65). In a reply dated March 2, petitioner stated that "the employees have indicated voluntarily and without compulsion whatsoever that they wish to deal directly and individually with the company and that they are not represented by you or your Union," and "that there is no occasion for holding an election" (T. 104, 141-142; B. A. 17, 65-66). No further meetings or correspondence took place between petitioner and the Union (T. 142).

B. *Proceedings before the Board*—Several times during the hearing before the trial examiner petitioner urged dismissal of the complaint on the ground that the Board had not shown compliance by the Union with Section 9 (f), (g), and (h) of the Act (Appendix, *infra,* pp. 18-21) (T. 48, 54, B. A. 1, 15, 17, 19, 25). The various motions and objections raising this contention were all denied. At the outset of the proceedings before the Board, petitioner had served a subpoena upon the Board's regional director calling for production of copies or originals of the non-Communist affidavits filed by the Union's officers in accordance with Section 9 (h). On motion of the regional director—citing Board Rules and Regulations, Series 5, Sections 203.89 and 203.90,[5] urging that the evidence sought was immaterial, and pointing out that the documents were in any event no longer in his possession —this subpoena was quashed (T. 33-34, B. A. 2). Similarly, a subpoena directed to the Union's representative, seeking copies of the materials filed under Section 9 (f), (g), and (h) was quashed (T. 35-39, B. A. 2-3). In his intermediate report, the trial examiner stated that he found no merit in petitioner's "contention that compliance with Section 9 (f), (g), and (h) must be affirmatively

[5] Section 203.90 directed Board employees, unless otherwise instructed by the Board or General Counsel, to decline to produce or present Board files, documents, or records in response to subpoenas. This regulation now appears as Section 102.90 of the Board's Rules and Regulations, Series 6, 16 Fed. Reg. 1934, 1947, effective March 1, 1951.

shown by pleading and proof in order to give the Board jurisdiction to issue its complaint and proceed to hearing" (T. 116).

Excepting to the trial examiner's report, petitioner urged before the Board that there was error in the failure to require an affirmative showing of the Union's compliance with Section 9 (f), (g), and (h) and pointed out that, after the quashing of its subpoenas, it had "made an offer of proof that if permitted in evidence the documents called for would show that the charging union had in fact not complied with the filing requirements of Section 9" (T. 70-71). In affirming the trial examiner's rulings, the Board referred to its previous decisions holding that the question of compliance with the filing requirements is not a matter for litigation by the parties. "Moreover," the Board declared, "we are administratively advised that the Union has fully complied with the filing requirements of the amended Act" (T. 95, n. 2).

On the merits, the Board found that, by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 (*supra,* pp. 3-5), petitioner had violated Section 8 (a) (1) of the Act.[6] Secondly, the Board found that, by discriminatorily discharging the two employees (*supra,* p. 3), petitioner had violated Section 8 (a) (3) of the Act. Finally, the Board

[6] This finding, like the finding of discriminatory discharges, is not challenged by petitioner here.

found that petitioner had refused to bargain collectively with the Union in violation of Section 8 (a) (5) and (1) (T. 98-106). The Board ordered cessation of the unlawful practices it had found, reinstatement of the employees wrongfully discharged with back pay, and the posting of appropriate notices (T. 107-109).

C. *Proceedings in the Court of Appeals*—In granting enforcement of the Board's order against petitioner (see note 2, *supra*), the Court of Appeals for the Fifth Circuit found that the record considered as a whole so clearly supported the Board's findings as to require no discussion (T. 184-185). As to the question of compliance with Section 9 (f), (g), and (h) of the Act, the court observed that petitioner had relied before the Board, and must therefore rely in court, "not upon any proof of its own that the Union had not complied, but upon what it deems the failure of the Union and Board to carry their burden" (T. 184). The court put to one side, therefore, questions which might conceivably arise where there was clear and positive proof that the Board had issued a complaint on a charge of a non-complying union or where an offer was made to present such proof in refutation of an announcement of compliance by the Board (T. 186-187). The Court merely held that "if it was necessary for the Union charges to show compliance on their face, this was done," and that the Board was not required, as a condition

to the exercise of its jurisdiction, to plead and prove the Union's compliance (T. 185-186, 187).

ARGUMENT

1. The conclusion that the Act does not require the Board to plead and prove that a charging union has complied with the filing requirements of Section 9 (f), (g), and (h)—a conclusion concurred in by the two other courts of appeals which have considered this question [7]—is clearly correct. The decision could be sustained, we believe, on the broader ground to which the petition for certiorari is addressed—that factual questions as to whether a charging union has complied with Section 9 (f), (g), and (h) are not litigable by the parties at all. However, this question was neither reached by the court below nor was it in any way necessary to its decision. For the court expressly and properly reserved judgment on the issues which might arise where there was proof or an offer of proof *of facts* showing that the Union was not actually in compliance. Cf. *National Labor Relations Board* v. *Wiltse*, 27 LRRM 2526, 2531 (C. A. 6).[8] And since

[7] *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840 (C. A. 4); *National Labor Relations Board* v. *Wiltse*, 27 LRRM 2526 (C. A. 6).

[8] Compare *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, No. 425, this Term, slip op. pp. 3-4, where this Court found it unnecessary to decide whether a factual issue relating to compliance would be subject to judicial review. As shown in our discussion which follows, the question thus left open is not presented here in any substantial sense. At issue here is the simpler question whether a bald, general assertion that the Union has not complied requires the Board to rehearse for the record the details of the

the holding that the Board is under no affirmative burden to prove the factual details of the Union's compliance is wholly dispositive of this case, review by this Court is not warranted.

As the court below pointed out (T. 186), nothing in the Act suggests a need for allegation and proof of the Union's compliance. See *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.,* 180 F. 2d 840, 845 (C. A. 4). It is clear, of course, that the Board must determine, before issuing a complaint on a charge filed by a labor organization, that the organization has filed with the Secretary of Labor and the Board the various documents required by Section 9 (f), (g), and (h).[9] It by no means follows, however, that having ascertained the facts of compliance, the Board must allege in its complaint that it has performed this plain duty or spread upon the record of its unfair labor practice proceeding the union's various reports, certificates and affidavits.

The very issuance of the complaint—plus, in the present case, the Board's express assurance that compliance has been administratively determined (T. 95, n. 2)—raises a well-founded presumption that the Board has acted properly, that the Union has in fact filed the necessary papers. *Stearns Co.*

documents which have been filed with the Board and the Secretary of Labor and found complete.

[9] In order to make such determinations, the Board has created rather elaborate administrative machinery to keep a continuing check on the recurrent reports and other documents which labor organizations must file to comply with Section 9. The unit directly responsible for this task is called the Affidavit Compliance Branch.

v. *United States,* 291 U. S. 54, 63; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14-15; *Smith* v. *St. Louis and Southwestern Ry. Co.,* 181 U. S. 248, 258; *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Company, supra,* at 844-845. At least in the absence of some showing that the Board has misconceived or disregarded its responsibility, this presumption amply satisfies petitioner's demand for demonstration that the law has not been flouted.[10]

Nor is petitioner aided by its so-called "offer of proof" (Pet. 4) which consisted of nothing more than an announcement by its attorney that if the papers required to be filed under Section 9 (f), (g), and (h) had been produced by the Board's regional director and the Union's representative in response to his subpoenas, they would show that compliance had not been effected (T. 71, 185, n. 2, A. 9). Pretermitting the uncontradicted statements of the regional director and the Union's representative that they did not have the documents in question (T. 34-37),[10] petitioner merely asserted that the documents would have turned out to be insufficient in some unspecified respect to show compliance "with the filing requirements of Section 9"; there was no offer to prove any particular fact which would show insufficiency. As the court below properly held,

[10] The regional director also pointed out that the Board's regulations would have prevented production of the papers even if he had had them. *Supra,* p. 7.

this bare statement constituted "no effort to prove affirmatively that there was no compliance" (T. 184). Cf. *McGuire* v. *Blount,* 199 U. S. 142; *Fay* v. *Douds,* 172 F. 2d 720, 724-725 (C. A. 2).[11] At most, this vague pronouncement was simply a reiteration of the attempt to saddle the Board with a burden of proving compliance—nothing more, that is, than a claim, unsupported by facts, that if the Board undertook the burden it would fail.

2. Petitioner's argument (Pet. 2, 7) that the record as a whole lacks substantial evidence to support the Board's finding of an unlawful refusal to bargain, far from suggesting the kind of "rare instance" where such a contention might be appropriate for review by this Court (see *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, 491), is plainly without merit. The evidence showed, and the Board accordingly found, that petitioner unlawfully discharged two employees for union activities, "interrogated and coerced other employees, * * * prepared and circulated a petition and telegrams intended to deny the authority of the Union to represent [its] employees in collective bargaining," and persistently rejected the Union's efforts to demonstrate that it represented a majority of the employees (T. 104; see pp. 3-6, *supra*). Against

[11] "Nebulous and declamatory assertions, wholly unspecified, must not stand in the path of an effective discharge of the Board's duties * * *." 172 F. 2d, at 725.

the background of these findings, which are not even contested here, there is no basis for petitioner's assertion (Pet. 12, 13) of the question whether an employer must bargain with a union when it "has been advised by its employees that they desire to bargain for themselves."

Equally baseless is the notion (Pet. 9, 12-13) that the refusal to bargain was rendered lawful because the Union had not been certified by the Board, or recognized by petitioner, as bargaining agent. Section 8 (a) (5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)." Section 9 (a) declares that representatives "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit * * *." It is well settled that no prior election or certification is required to sustain a finding by the Board that an employer has wrongfully refused to bargain with the representatives of a majority of his employees in an appropriate unit. *E.g., National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318; *International Ass'n of Machinists* v. *National Labor Relations Board,* 311 U. S. 72; *Franks Bros. Co.* v. *National Labor Relations Board,* 321 U. S. 702. As for petitioner's refusal to "recognize" the

Union—assuming this to mean it in good faith questioned the Union's majority—the course of anti-union conduct proved at the hearing fully supports the Board's contrary finding (T. 105) that petitioner "was not motivated by a bona fide doubt of the Union's majority but by a studied purpose to foreclose the Union from establishing its majority in a Board proceeding and thereby to avoid [its] statutory duty to bargain."

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY, 1951.

APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are as follows:

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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